



U.S. Citizenship
and Immigration
Services



FILE: WAC 02 205 50603 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a dry cleaner that seeks to employ the beneficiary as an accountant. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, the petitioner submits a letter.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's May 30, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the May 30, 2002 letter, the beneficiary would perform duties that entail: recording and analyzing the petitioner's financial information; budgeting; researching and preparing financial reports; and preparing payroll and billing. In response to the director's request for evidence, the petitioner stated that the beneficiary would perform duties that entail: monitoring revenue and expenses; ensuring expenditure control and compliance with funding and reporting requirements; generating monthly financial statements; processing invoices for payments and recording all cash disbursements and cash receipts; depositing all cash receipts; preparing monthly billing for reimbursements; maintaining general journals and receiving journals and performing month-end closing tasks; preparing monthly bank reconciliations; preparing a depreciation schedule of fixed assets; coordinating the preparation of regularly scheduled and special billings, costs, reports, analyses, inventories and financial statements; developing and monitoring the company budget; assisting the president in presenting the company budget; performing payroll functions; inputting hours/earnings into payroll system; reviewing timesheets; transmitting and downloading data; preparing and entering payroll journal entries in the accounting system; auditing payroll ledger for accuracy; helping to conduct cost analysis to support strategic and managerial decisions; helping with feasibility studies for new projects/business ventures; and supporting the president with strategic analysis and recommendations to support operations, acquisitions, dispositions and other managerial decisions. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in accounting.

The director found that the proffered position was not a specialty occupation because petitioner did not establish that there was a bona fide position for the beneficiary to fill.

On appeal, the petitioner states that the proffered position of an accountant is a specialty occupation. The AAO does not disagree with the petitioner on this matter; an accountant is generally considered to be a specialty occupation. The issue to be resolved is whether the proffered position is actually that of an accountant.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO does not concur with the petitioner that the proffered position is that of an accountant. There are elements of an accountant's duties in the proffered position, but the majority of the position description parallels that of a bookkeeper or accounting clerk. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a bookkeeper or accounting clerk.

Regarding parallel positions in the petitioner's industry, the petitioner submitted a listing of 15 of its competitors and stated that it had surveyed them and they all employed accountants. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner provides no evidence beyond this listing that these establishments are similar to the petitioner, or that they employ individuals in positions parallel to the instant position. Thus, this listing has no relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. This is a new position, and the petitioner is not in a position to meet this criterion. In attempting to do so, however, the petitioner submitted a copy of a newspaper advertisement for the position to establish that it required a bachelor's degree. The AAO notes that the advertisement was submitted in response to the director's January 16, 2003 request for evidence. The advertisement was published on February 14, 2003, eight months after the petition was filed and one month after the request for evidence. It appears that the petitioner published the advertisement in response to the director's request.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The director found that the proffered position is not bona fide and, therefore, that the proffered specialty occupation does not exist. An H-1B alien is coming temporarily to the United States to perform services in a specialty occupation. Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 101(a)(15)(H)(i)(b). 8 C.F.R. § 214.2(h)(1)(ii)(B). In this case, the petitioning entity states that it is a dry cleaning business with five employees and that has a gross annual income of \$300,000. The petitioner claims that it will employ the

beneficiary as a full-time accountant. The *Handbook* indicates that management accountants are usually part of executive teams involved in strategic planning or new-product development. Public accountants are generally self-employed or work for accounting firms. See the *Handbook*, 2004-2005 ed. at 68-69.

The service center requested that the petitioner submit a detailed description of the beneficiary's proposed duties, the number of employees to be supervised, and an explanation as to why the petitioner proposed to employ a full-time accountant rather than a bookkeeper, in order to establish that a dry cleaning facility of this size will in fact be able to employ a full-time accountant. The petitioner submitted a brief description of the beneficiary's proposed duties and advised that the proffered accountant position requires the beneficiary to assist in the preparation of the monthly and annual budgets; prepare, analyze and audit payroll, and maintain inventory or asset management and financial analysis by making monthly fiscal-end financial reports. According to the petitioner, a bookkeeper would not perform these duties.

The petitioner also claimed that the employer needs an accountant because "it has increased the volume of business projected to be a million in year 2002." The petitioner provided no documentation in support of this claim. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, the claim about the petitioner's projected \$1,000,000 income was actually made on February 27, 2003, in response to the director's request for evidence. The petitioner provided no evidence that it had generated this type of income. In fact, the Form I-129, submitted on June 12, 2002, stated that the petitioner's gross annual income was \$300,000. This discrepancy has not been explained. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Based on this conflicting information, the petitioner has failed to establish that it will be able to employ the beneficiary as a full-time accountant, and that the beneficiary will be coming to perform services in a specialty occupation, in accordance with Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 101(a)(15)(H)(i)(b).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.